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EXAMINER	
ABEL JALIL, NEVEEN	

ART UNIT	PAPER NUMBER
2165	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## *Office Action Summary*	**Application No.**	**Applicant(s)**	
	10/678,860	GREIFENEDER ET AL.	
	Examiner	**Art Unit**	
	Neveen Abel-Jalil	2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11/3/2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14 and 16-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14, & 16-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Remarks

1. The Amendment filed on November 3, 2006 has been received and entered. Claims 1-14, and 16-20 are pending.

2. Applicant's Amendment has overcome previous rejection under 35 USC 101, and some of the previous claim objections, and some of the previous rejections under 35 USC 112, second paragraph.

Claim Objections

3. Claims 1, 4, 5, and 6 are objected to because of the following informalities:

Claims 1, and 4, appear to be missing semicolon to start the recitation of the claimed elements. For example, claim 1, line 6, need a semicolon. Claim 4, line 2, also needs a semicolon. Appropriate correction is required.

Claims 1, and 6, recite "can be used" which suggest optionally making it never having to take place. Claims should be amended to recite more direct language such as "is used", "usable" or "to be used". Appropriate correction is required.

Claim 5, line 3, introduces " a user" again although first introduced in claim 4 of which claim 5 dependents. Is this a new instant of the "user" or a reference back to the user of claim 4 and if so, then it lacks antecedent basis. Correction is required.

Claim 6, preamble starts with "automatic detection" although "automatic" is never implied or mentioned again in the body of the claim. There appears to be a mention of detection however not of "automatic". Clarification and consistency is required in the body of the claim.

Claim 6, line 3, recite "a configuration" then go on to recite in line 14 "a generic configuration" indicating it to be a new instance of a configuration different than the original. If not, the recitation is not consistent and lacks antecedent basis. Clarification is required.

Claims 4, and 5 recite the limitaion "to enable" is indirect, suggest optionally, and passive which renders any recitation claimed after not be given patentable weight. Appropriate correction is required.

The Examiner points to MPEP 2106 [II-C] wherein the claim's recitation of "to enable" raises the question to Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

Office personnel must rely on the applicant's disclosure to properly determine the meaning of ** the claims. Limitations appearing in the specification but not recited in the claim are not read into the claim; therefore, in this case, the recitation of "to enable" as interpreted in light of the specification provide the "functionality" or "the capability" of the database management system to perform the steps without definite disclosure limiting or excluding any alternative, negative, or even all together suggest actually performing or implementing the functionality that is database management system is capable of.

Therefore, any cited art that teaches the steps otherwise in the alternative can be used to reject the instant application. The computer being adapted to perform a function does not mean that it will ever actually perform that functionality (i.e. "to enable" should be clarified and changed to a more definite term "employ" or "provide").

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 2, 3, 4, 5, 11, and 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the particular data source" in lines 15 and 16. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said possible combinations" in line 20. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the data source detection module" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "said actually" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "said monitoring information service" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "said user" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "said data source detection module" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation " the particular data source " in lines 6 and 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "the step of receiving a range" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "the probe engine" and “the data source detection module” in lines 2 and 3, respectively. There is insufficient antecedent basis for this limitation in the claim.

Claim 18 recites the limitation "the probe engine" and “the data source detection module” in lines 2 and 3, respectively. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "the step of activating a probe" in line 2. There is insufficient antecedent basis for this limitation in the claim.

The Amendment language of claim 1 with respect to performing all the steps based on a specific configuration is unclear. Claim 1, line 18, recite ‘scanning said one or more” without any tie-in or mention to the scanning step as being also based on said configuration. Therefore, subsequently “generating a list of said possible combination of said data sources specified by said configuration” could not take place. There was never a specification of any combination of data sources based on a configuration made prior to this generated list. No data sources were identified by said configuration instead identification occurred prior to the specification of required configuration, thus making the claim confusing. Clarification is required.

Claim 1, last sentence states "outputting a list of the detected metric" which is vague and confusing … if there was only one metric to be detected, why would a list be constructed? There would be no list to output. Clarification is required.

Claim 3, line 5, recite "probing said monitoring information service" without any further indication or explanation or language to the use or result of such probing. To what end does this process of "probing" involve? What is the purpose in the claim behind such stated "probing" operation? Clarification is required.

Claim 11, line 4, recite "list of detected monitoring information resource" although the only prior of detection was made with respect to "monitoring information" and NOT resources. Thus, its unclear how a list can be compiled of items never actually detected? Correction is required.

Claim 19, line 2, recite "service type identified in the service table" without any prior disclosure to the "service table" actually holing or containing service type information. The only previous disclosure of the service table is made in claim 6 stating it identifies services to be use to monitor". No indication to its organization by type. The claim is such vague and indefinite. Correction is required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-14, and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Moran et al. (U.S. Patent No. 6,633,835 B1).

As to claim 1, Moran et al. discloses a computer implemented system for managing and monitoring one or more computer systems, said computer implemented system comprising:

A computer having a processor, a storage device, a memory device and a network device configured to receive monitoring information from the one or more computer systems;

And a computer readable medium encoded with computer program configured to perform the steps of

identifying available data sources in said one or more computer systems;

detecting at least one metric related to at least one of the available data sources (See column 38, lines 26-30);

acquiring instructions from a configuration stored in the computer storage device to be utilized by to query at least one of said computer systems (See column 17, lines 31-58, also see column 38, lines 27-30), said configuration comprising a service tale identifying one or more services that can be used to monitor at least one of said computer systems (See column 39, lines 14-41, wherein "service" are classified i.e. stored in a table that are associated with application monitoring, also see column 51, lines 10-30), a detection table identifying information to detect the particular data source, and a metric table identifying a metric for the particular data source (See column 35, lines 44-65, also see column 39, Table 54, shows various metrics that can be collected);

scanning said one or more computer systems to generate a list of the available data sources in said scanned computer systems (See column 17, lines 31-58, also see column 38, lines 27-30);

said list comprising a subset of said possible combinations of said data sources specified by said configuration (See column 37, lines 56-67, and see column 38, lines 1-30, for all possibility of collected information); and

outputting a list of the detected metric (See column 38, lines 26-30).

As to claim 2, Moran et al. discloses wherein the data sources are monitoring information sources in said one or more computer systems (See column 5, lines 36-54); and

the at least one metric is related to said monitoring information source, said metric being detected by the data source detection module to output said list of said actually available data sources (See column 42, lines 33-45).

As to claim 3, Moran et al. discloses further comprising:

provide monitoring information of one of said computer systems (See column 44, lines 62-67); and probing said monitoring information service (See column 6, lines 1-5).

As to claim 4, Moran et al. discloses further configured to

collect performance information from said data sources utilizing data collection tools, and enable said user to choose said data sources for monitoring (See column 17, lines 1-29).

As to claim 5, Moran et al. discloses further configured to enable a user to interact with said data source detection module and said data collection tools though graphical user interface (See column 38, lines 43-65).

As to claim 6, Moran et al. discloses a method for automatic detection of monitoring data sources of at least one computer system, said method comprising the steps of:

providing a configuration containing instructions to query at least one of said at least one computer system (See column 17, lines 31-58, also see column 38, lines 27-30), said configuration comprising a service tale identifying one or more services that can be used to monitor at least one of said computer systems (See column 39, lines 14-41, wherein "service" are classified i.e. stored in a table that are associated with application monitoring, also see column 51, lines 10-30), a detection table identifying information to detect the particular data source, and a metric table identifying a metric for the particular data source (See column 35, lines 44-65, also see column 39, Table 54, shows various metrics that can be collected);

providing a data detection module (See column 17, lines 31-58, also see column 38, lines 27-30);

said data detection module identifying, by using said configuration, available data sources of at least one of said at least one computer system (See column 17, lines 31-58, also see column 38, lines 27-30);

collecting meta and performance information of said available data sources of at least one of said at least one computer system (See column 37, lines 56-67, and see column 38, lines 1-30, for all possibility of collected information);

embedding an expert's knowledge into a generic configuration in software used in said step of collecting meta and performance information (See column 19, lines 15-20, and see column 42, lines 36-60, also see column 44, lines 50-67);

presenting said meta and performance information to a user (See column 44, lines 50-67); and

presenting a list of said identified available data resources to said user (See column 50, lines 53-67).

As to claim 7, Moran et al. comprising the step of:

receiving access information from said user, wherein said access information comprises one member of the group consisting of a username and a password (See column 18, lines 27-40).

As to claim 8, Moran et al. discloses comprising the steps of:

receiving a list of data sources chosen by said user (See column 17, lines 1-29);

extracting said meta and performance data from said chosen data sources (See column 37, lines 56-67, and see column 38, lines 1-30, for all possibility of collected information); and presenting said meta and performance data to said user (See column 44, lines 50-67).

As to claim 9, Moran et al. discloses comprising the step of:

utilizing a probe engine to verify whether a service of one of said at least one computer system is responding determining said meta and performance data of an environment in which said service is running, in response to said probe engine verifying said service is running (See column 37, lines 39-55, also see column 40, lines 55-62).

As to claim 10, Moran et al. discloses wherein the service probing step is performed for each service of said at least one computer system (See column 6, lines 1-6).

As to claim 11, Moran et al. discloses comprising the step of:

utilizing said probe engine to identify a monitoring information source in said at least one computer system and stores said monitoring information source in a list of detected monitoring information sources (See column 17, lines 31-67, also see column 38, lines 26-30).

As to claim 12, Moran et al. discloses wherein the monitoring information source probing step utilizes the probe engine to identify the monitoring information source and storing the monitoring information source in the list of detected monitored information sources are performed for each monitoring information source of said at least one computer system (See column 17, lines 15-29).

As to claim 13, Moran et al. discloses comprising the step of:

utilizing said probe engine to determine a metric associated with each of said monitoring information sources (See column 37, lines 56-67, and see column 38, lines 1-30, for all possibility of collected information).

As to claim 14, Moran et al. discloses wherein said meta information comprises set-up information of said at least one computer system (See column 17, lines 1-29).

As to claim 16, Moran et al. discloses wherein said list receiving step comprises the step of receiving a range of data sources of said network environment, said range being specified by said user (See column 17, lines 1-29).

As to claim 17, Moran et al. discloses wherein:

the probe engine corresponds to a service type (See column 57, lines 14-64, shows a list of functionality probe is capable of performing); and

the data source detection module activates the probe engine depending on the service type (See column 38, lines 60-65).

As to claim 18, Moran et al. discloses wherein the lists of the available data sources and the detected metrics output by the data sources detection module are populated while the probe engine identifies all of the available data sources and detected metrics (See column 18, lines 55-67).

As to claim 19, Moran et al. discloses further comprising the step of activating a probe engine according to a service type identified in the service table (See column 39, Table 56, shows type of service), wherein the probe engine probes a monitoring information service to monitor information of the computer system (See column 19, lines 15-20, and see column 42, lines 36-60, also see column 44, lines 50-67).

As to claim 20, Moran et al. discloses further comprising the step of populating the list of the available data sources, wherein the list of the avaible data sources is initially empty (See column 19, lines 15-20, and see column 42, lines 36-60, also see column 44, lines 50-67, wherein "initially empty" reads on "user control" and definition since it can be altered accordingly).

Response to Arguments

8. Applicant's arguments filed on November 3, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that "Moran et al. merely monitors and analyzes network traffic, and not receive monitoring information fro identified data resources on the network computer systems" is acknowledged but not deemed to be persuasive.

Firstly, "network traffic" is in fact "monitored information". There's no specific description made in the claims to further clarify this "monitor information". Thus, it remains to be broadly interpreted by the cited reference. Second, Moran et al. as a whole is directed to monitoring network resources by collecting needed information. The claimed invention as stated in claim 1 appears to be directed to a centralized monitoring server (computer system) that receives and monitoring information from remote systems (network computer systems) to diagnose and identify their resources. While, Moran et al. teaches collecting data from a network segment to monitor remotely installed applications and service offerings in real-time (See column 5, lines 37-59). Furthermore, Moran et al. teaches remote network management agents collecting such information in Figure 4, 302, and Figure 27, RMON agent as well as column 5, lines 41-47, and column 19, lines 2-26. Thus, no different from the claimed invention.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., scan the computers attached to the network to detect data sources providing monitoring information) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

This feature is not in the independent claims, what is in fact claimed is "detection of availability of the data resource". Regardless, Moran et al. teaches monitoring agents (i.e. data sources) that collect and provide monitoring information in Figure 4, 302, and Figure 27, RMON agent as well as column 5, lines 41-47, and column 19, lines 2-26.

In response to applicant's argument that "Moran et al. does not teach or suggest the configuration provides information and instructions on how to scan and query the computer systems" is acknowledged but not deemed to be persuasive.

In the independent claims, the configuration is not as being part of the "scanning" step nor is the "scanning" is clearly indicated as being based on any specified configuration. Regardless, Moran et al. teaches user-selected configuration to collected and view certain tables in column 43, lines 62-67, and column 44, lines 1-9 (i.e. in applicant's case the configuration includes three tables). In column 15, lines 10-17, and column 15, lines 36-43, Moran et al. teaches the configuration can be customized to collect any needed performance measures (i.e. service table, etc.). And in column 43, lines 51-62, Moran et al. extensively discusses the relationship of the triggers detecting and collecting monitoring information based on a given configuration.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., monitoring g or managing monitor information that is maintained locally at the network computer systems) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Examiner does not see this distinction in the claims.

In response to applicant's argument that "Moran et al. does not teach or suggest the feature of "data source detection module for identifying avaible data sources in said one or more computer systems" is acknowledged but not deemed to be persuasive.

The "scanning" step is written to be dependent on the "detecting" step in the Independent claims. There appears to be little correlation between the two unlike what is suggested by the Applicant's remarks. Nevertheless, Moran et al. in column 33, lines 4-25, teaches a "probing" RMON device that performs scanning and detection.

In response to applicant's argument that "Moran et al. 's trigger do not scan or identify avaible data sources to the monitoring system" is acknowledged but not deemed to be persuasive.

Moran et al.'s triggers indeed identify availability and diagnostic of the segment they reside on (i.e. are they functioning probably? is there a running connection?, etc.) of resources in the network. Moran et al. in column 15, lines 18-24, also teaches the utilization of engines to send common type of information from various source to UI servers.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hellerstein et al. (U.S. Patent No. 6,330,564 B1) teaches MIB tables by selected configuration parameters.

O'Connor et al. (U.S. Pub. No. 2002/0128976 A1) teaches software licenses and usage.

Ding et al. (U.S. Patent No. 6,691,067 B1) teaches monitoring performance workload characterization.

Masters et al. (U.S. Patent No. 7,051,098 B2) teaches selectively configuring applications in a resource managed network and monitoring performance.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neveen Abel-Jalil
January 22, 2007